

No. 23-15992

**United States Court of Appeals
for the Ninth Circuit**

FEDERAL TRADE COMMISSION,

Plaintiff-Appellant,

v.

MICROSOFT CORP. AND ACTIVISION BLIZZARD, INC.,

Defendants-Appellees.

Appeal from an Order of the
U.S. District Court for the Northern District of California
No. 3:23-cv-02880-JSC, Hon. Jacqueline Scott Corley

**DEFENDANTS'-APPELLEES' MOTION AND
BRIEF IN SUPPORT OF MOTION TO FILE DOCUMENTS
UNDER SEAL PURSUANT TO CIRCUIT RULE 27-13**

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**MOTION AND BRIEF IN SUPPORT OF MOTION
TO FILE DOCUMENTS UNDER SEAL**

Defendants-Appellees Microsoft Corporation and Activision Blizzard, Inc. move pursuant to Circuit Rule 27-13 for leave to file under seal their Answering Brief, *see* Exhibit A, and Volume 3 of their Supplemental Excerpts of Record, *see* Exhibit B.

Although this Court recognizes “a strong presumption in favor of public access to documents,” Circuit Rule 27-13(a), it will grant a motion to seal documents and exhibits submitted on appeal when it concludes that “compelling reasons . . . outweigh the general history of access and the public policies favoring disclosure.” *United States v. Al-Nouri*, 983 F.3d 1096, 1098 (9th Cir. 2020) (quoting *Kamakana v. City & Cnty of Honolulu*, 447 F.3d 1172, 1178–79 (9th Cir. 2006).

Compelling reasons warrant sealing portions of Appellees’ Answering Brief and Supplemental Excerpts of Record. Both contain Appellees’ competitively sensitive and confidential business information, as well as that of nonparties including Sony Interactive Entertainment, Nintendo of America Inc., and NVIDIA Corporation. This information was designated as confidential and sealed pursuant to a protective order entered by the district court. *See* Dkt. 115-1

(Defendants’ proposed protective order), 170, at 2 (“Defendants’ proposed protective order shall govern.”). Appellees and the relevant third parties also designated this information as confidential during the Federal Trade Commission’s precomplaint investigation pursuant to Section 21 of the FTC Act, 15 U.S.C. § 57b-2. The Answering Brief and Supplemental Excerpts of Record also contain information provided to the FTC subject to a confidentiality order entered by FTC Administrative Law Judge Chappell on December 9, 2022. *See In the matter of Microsoft Corp. and Activision Blizzard Inc.*, FTC Docket No. 9412.

The unredacted material in both the Answering Brief and Volume 3 of the Supplemental Excerpts of Record will benefit the Court in its review of this matter. Accordingly, Appellees seek leave to file both documents under seal.

Appellees will also file a public version of the Answering Brief redacting the portions highlighted in the unredacted version attached as Exhibit A to this motion.

CONCLUSION

For the above reasons, Appellees request that their Answering Brief and Volume 3 of their Supplemental Excerpts of Record be filed under seal.

September 6, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitations of Circuit Rules 27-1(1)(d) and 32-3(2) because it contains 318 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 27(a)(2)(B) and 32(f).

This Brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface using the Microsoft Word 365 word processing system in 14-point Century Schoolbook font.

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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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Signature /s/ Rakesh Kilaru

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